

Terri H. Didion, Assistant United States Trustee
State Bar No. CA 133491
Carlos R. Hernandez-Vivoni, Trial Attorney
State Bar No. TX 24096186
UNITED STATES DEPARTMENT OF JUSTICE
Office of the United States Trustee
300 Las Vegas Boulevard, So., Ste. 4300
Las Vegas, NV 89101
Tel.: (702) 388-6600
Fax: (702) 388-6658
carlos.hernandez-vivoni@usdoj.gov

E-Filed: February 9, 2023

Attorneys for the United States Trustee for Region 17
TRACY HOPE DAVIS

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

TERESA RENITA BURWELL,

Debtor.

Case No: 23-10056-mkn

Chapter 7

Hearing Date: March 15, 2023

Hearing Time: 2:30 p.m.

Toll-free conference line: (669) 254-5252

Meeting ID: 161 062 2560

Code: 029066#

**UNITED STATES TRUSTEE'S MOTION TO DENY
DEBTOR'S DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(8)**

Tracy Hope Davis, the United States Trustee for Region 17 ("U.S. Trustee"), by and through her undersigned counsel, respectfully moves the Court for an order denying the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(8) ("Motion").

This Motion is made based upon the following points and authorities along with the Declaration of Melinda R. Davis filed herewith (the "Davis Declaration") and the exhibits thereto, the record in the instant case, and Case No. 15-14405-mkn, District of Nevada.

1 **SUMMARY OF MOTION**

2 The Debtor received a discharge in a previous chapter 7 bankruptcy case that was filed
3 within eight years of the current chapter 7 case. Accordingly, the Debtor is ineligible for a chapter
4 7 discharge, and the Court should grant the U.S. Trustee's Motion.

5 **POINTS AND AUTHORITIES**

6 **A. U.S. Trustee's Standing**

7 The U.S. Trustee is responsible for supervising the administration of cases and trustees
8 under the Bankruptcy Code. *See* 28 U.S.C. § 586(a)(3). To enable the U.S. Trustee to carry out
9 that duty, Congress granted the U.S. Trustee standing to raise and to "appear and be heard on any
10 issue in any case or proceeding" brought under the Bankruptcy Code. 11 U.S.C. § 307.
11

12 **B. Background and Relevant Facts**

13 1. On July 31, 2015, the Debtor Teresa Renita Burwell ("Debtor") filed a chapter 7
14 bankruptcy case designated as Case No. 15-14405-mkn, District of Nevada (the "2015 Case").
15 [See Exhibit 1 to the Davis Declaration (docket for 2015 Case); unnumbered docket entry dated
16 January 10, 2023, Case No. 23-10056-mkn].
17

18 2. On April 20, 2016, the Debtor was granted a discharge of her debts in the 2015
19 Case. [See Exhibit 2 to the Davis Declaration (discharge in 2015 Case); unnumbered docket
20 entry dated January 10, 2023, Case No. 23-10056-mkn].
21

22 3. On January 9, 2023, the Debtor filed the instant chapter 7 bankruptcy case. [See
23 ECF No. 1 in Case No. 23-10056-mkn].

24 4. The deadline to object to the Debtor's discharge or to challenge the
25 dischargeability of certain debts in this chapter 7 case is April 10, 2023. [See ECF No. 2, Case
26 No. 23-10056-mkn].
27

1 **C. Authorities & Discussion**

2 5. Under 11 U.S.C. § 727(a)(8), the court shall grant a debtor a discharge unless the
3 debtor has been granted a chapter 7 discharge in a case commenced within eight years before the
4 date of the filing of the current petition. The eight-year calculation is measured from the petition
5 date in the previous bankruptcy case rather than the date of the discharge in that case. *In re*
6 *Marshall*, 74 B.R. 185, 186 (Bankr. N.D.N.Y. 1987).
7

8 6. When a debtor is not eligible for discharge due to 11 U.S.C. § 727(a)(8), the
9 objection to discharge may be sought by motion instead of an adversary complaint. *See* Fed. R.
10 Bankr. P. 4004(d) *and* 7001(4).
11

12 7. On April 20, 2016, the Debtor received a discharge in the 2015 Case, which case
13 was commenced within eight years of the filing of this instant case. [*See* ECF No. 1, Case No.
14 23-10056-mkn, *and* Exhibits 1 and 2 to the Davis Declaration]. Based upon the Debtor's
15 previous bankruptcy discharge and the prohibitions contained in 11 U.S.C. § 727(a)(8), the
16 Debtor is not eligible to receive a discharge in this case.

17 **CONCLUSION**

18 WHEREFORE, the U.S. Trustee respectfully requests that the Court enter an order
19 denying the Debtor's discharge pursuant to 11 U.S.C. § 727(a)(8), and for such other and further
20 relief as is deemed appropriate.
21

22 Date: February 9, 2023

Respectfully Submitted,

23 TRACY HOPE DAVIS
24 UNITED STATES TRUSTEE

25 By: /s/ Carlos R. Hernandez-Vivoni
26 Carlos R. Hernandez-Vivoni,
27 Trial Attorney
28

EXHIBIT A

**PROPOSED FORM OF
ORDER**

Terri H. Didion, Assistant United States Trustee
State Bar No. CA 133491
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Las Vegas, NV 89101
Tel.: (702) 388-6600
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**ORDER GRANTING UNITED STATES TRUSTEE'S MOTION TO DENY
DEBTOR'S DISCHARGE PURSUANT TO 11 U.S.C. § 727(a)(8)**

Based on the *United States Trustee's Motion to Deny Debtor's Discharge Pursuant to 11 U.S.C. § 727(a)(8)*, (the "Motion"), the hearing held on March 15, 2023 (appearances noted on

1 the record), the Court having stated on the record its findings of fact and conclusions of law,
2 which are incorporated herein pursuant to Federal Rules of Bankruptcy Procedure 9014(c) and
3 7052, and Federal Rule of Civil Procedure 52, with good cause having been shown,

4 IT IS HEREBY ORDERED that the Motion is GRANTED; and,

5 IT IS HEREBY FURTHER ORDERED that the above-captioned Debtor's discharge is
6 denied.
7

8 IT IS SO ORDERED.
9

10 Submitted by:

11 TRACY HOPE DAVIS
12 UNITED STATES TRUSTEE

13 By: /s/ Carlos R. Hernandez-Vivoni
14 Carlos R. Hernandez-Vivoni
15 Trial Attorney for the United States Trustee

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RULE 9021 DECLARATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the Court's ruling and that:

- ☐ The court has waived the requirement of approval under LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

APPROVE/DISAPPROVE	
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☐ I certify that this is a case under Chapter 7 or 13, that I served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

I declare under penalty of perjury that the foregoing is true and correct.

By: /s/ Carlos R. Hernandez-Vivoni
 Carlos R. Hernandez-Vivoni
 United States Department of Justice
 Attorney for the United States Trustee